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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Mutual Protective Bureau

File: B-243329

Date: April 22, 1991

James B. Houston for the protester.
Amy J. Brown, Esq., General Services Administration, for the agency.
Christine F. Bednarz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation improperly included agency clause inconsistent with Federal Acquisition Regulations is dismissed, where the contracting agency was granted a deviation from the regulation.

DECISION

American Mutual Protective Bureau (AMPB) protests invitation for bids (IFB) No. GS-09P-91-KSD-0036, issued by the General Services Administration (GSA), for the procurement of guard services at various California locations.

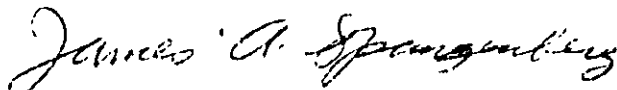
We dismiss the protest.

AMPB protests the IFB's inclusion of the clause at General Services Acquisition Regulation (GSAR) § 52.222-43, which imposes a ceiling on the amount a contractor may adjust labor prices under contract options to offset any increased minimum wage rate made pursuant to the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. AMPB argues that our Office, in IBI Sec. Serv., Inc., B-239659, Sept. 13, 1990, 69 Comp. Gen. _____, 90-2 CPD ¶ 205, found that this provision conflicted with Federal Acquisition Regulation (FAR) § 52.222-43, which allows a pass through of recoverable labor costs with no ceiling.

On November 30, 1990, GSA obtained a class deviation from FAR § 52.222-43 to use the contested GSAR clause for all solicitations issued, and contracts awarded, after

September 13, 1990, until the agency could develop an alternate approach. On reconsideration of the IBI Sec. Serv., Inc. decision, we determined that the class deviation removed the sole legal impediment to the use of the GSAR ceiling clause. General Servs. Admin.--Recon., B-239569.2, Feb. 13, 1991, 91-1 CPD ¶ 163. Under the circumstances, we will not object to the use of GSAR § 552.222-43 in this situation.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel